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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,785	11/19/2002	Robert S. Lapeyre	2167.0	4742

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EXAMINER

DEUBLE, MARK A

ART UNIT	PAPER NUMBER
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3651

DATE MAILED: 02/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/065,785

Applicant(s)

LAPEYRE ET AL.

Examiner

Mark A. Deuble

Art Unit

3651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) 24-38 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-22 and 39-54 is/are allowed.
- 6) ☒ Claim(s) 23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Species F, claims 1-3, 14-15, 17, 19-23, 39-52, and 54 in Paper No. 4 is acknowledged.

2. Claim 1 is generic and allowable. Accordingly, the restriction requirement as to the encompassed species is hereby withdrawn and claims 4-13, 16-18 and 53, directed to some of the other species, are no longer withdrawn from consideration since all of the claims to this species depend from or otherwise include each of the limitations of an allowed generic claim. However, claims 24-38, directed to the other species of remain withdrawn from consideration since they do not depend upon or otherwise include all the limitations of an allowed generic claim as required by 37 CFR 1.141.

In view of the above noted withdrawal of the restriction requirement as to the linked species, applicant(s) are advised that if any claim(s) depending from or including all the limitations of the allowable generic linking claim(s) be presented in a continuation or divisional application, such claims may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 23 is rejected under 35 U.S.C. 102(b) as being anticipated by Bonnet (U.S. Patent No. 5,921,378).

Bonnet '378 shows a conveying system comprising a conveyor 14 conveying articles in a direction of travel along a carryaway. The conveyor includes slat members 18 having lateral slots 22 formed therein to extend in a direction transverse to the direction of travel. A transport element 130 has a guide 136 residing in the slot to that the transport element may ride along the

Art Unit: 3651

slot (see Fig. 12). Located with the transport element on the slat member 18 is a motor 160 that actuates a drive element formed by a screw 148. The drive element engages the guide to drive the transport element along the slot. Thus, Bonnet shows all the structure required by claim 23.

Allowable Subject Matter

5. Claims 1-22 and 39-54 are allowed.

6. The following is a statement of reasons for the indication of allowable subject matter:

While Bonnet shows a conveyor system comprising a plurality of slats having lateral transport elements mounted in slots formed therein so that a motor located with the transport element may actuate a drive element to move the transport element across the surface of the slat as required the claims, the motor does not ride with the transport element across the outer conveying side of the conveyor as required by claims 1-22 and 39-47 and it does not have an electrically powered drag chain as required by claim 48 and it would not have been obvious to one of ordinary skill in the art at the time of the invention to do so.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The patents to Bonnet (U.S. Patent Nos. 5,590,798 and 6,318,539) both show slat conveyors with lateral transport elements which are used to discharge articles from the conveyors in a fashion similar to that of the present invention.

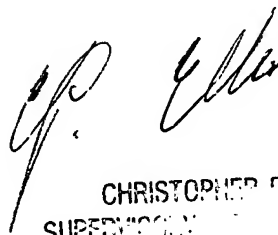
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A. Deuble whose telephone number is (703) 305-9734. The examiner can normally be reached on Monday through Friday except for alternate Fridays.

Art Unit: 3651

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher P Ellis can be reached on (703) 308-2560. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1113.

md



CHRISTOPHER P. ELLIS
SUPERVISOR
TECHNOLOGY CENTER
